

§ 794.113 The enterprise must be "local."

It is clear from the language of section 7(b)(3) that the exemption which it provides is available to an enterprise only if it is a "local enterprise". The other tests of exemption must also, of course be met. A "local" enterprise is not defined in the Act, and the word "local", which appears in a different context elsewhere in the Act (see clause (2) of the last sentence of section 3(r) and sections 13(b)(7), 13(b)(11)), is likewise given no express definition. There is no fixed legal meaning of the term "local"; it is usually a flexible and comparative term whose meaning may vary in different contexts. As used here, certain guides are available from the context in which it is used, the legislative history surrounding adoption of section 7(b)(3), and the law of which it forms a part. A "local" enterprise engaged in the wholesale or bulk distribution of petroleum products is clearly intended to embrace the kind of enterprise operated by the merchants who requested the amendment; that is, one which provides farmers, homeowners, country merchants, and others in its locality with petroleum products in bulk quantities or at wholesale. The language of section 7(b)(3) makes it clear also that the enterprise will not be regarded as other than "local" merely because it has more than one bulk storage establishment. On the other hand, the section makes it equally clear that ordinarily an enterprise which is not located within a single State is not a local enterprise of the kind to which the exemption will apply. This follows from the express requirement that more than 75 percent of the enterprise's annual dollar volume of sales must be made "within the State in which such enterprise is located." The legislative history provides further evidence of this intent. At the hearings before the Senate Labor Subcommittee a proponent of the amendment which eventually was enacted in somewhat different language (sec. 13(b)(10) of the Act which was repealed by the 1966 Amendments to the Act and replaced by section 7(b)(3)), stated with respect to the significance of the word "local":

* * * the language which we have suggested in the proposed amendment "locally owned and controlled establishments", I admit that can point up some trouble and make some work for lawyers.

We, however, in our endeavor to show our sincerity of only trying to cover local intrastate establishments, went overboard on this language.

You will note that 75 percent of our business has to be performed in one State. I think that "locally owned and controlled establishments" language should better read "independently owned and controlled local enterprises or establishment." (Sen. Hearings on amendments to the Fair Labor Standards Act, 87th Cong., first session, p. 416.)

The same witness also quoted from the Congressional Record of August 18, 1960, the discussion in the course of the consideration of the amendments to the Act by the Senate during the 86th Congress, second session, as follows:

These wholesale and bulk distributors of petroleum products, commonly referred to as oil jobbers, are primarily local businessmen who acquire these products from their suppliers' bulk terminal in the State in which the jobber does business and sell these products to service stations, farmers, and homeowners in the State in which they maintain their place of business * * * I am advised that 98.3 percent of all the oil jobbers in the United States sell their products only in the State in which their place of business is located thus qualifying by any definition as local merchants. (Sen. Hearings on amendments to the Fair Labor Standards Act 87th Cong., first session, pp. 415-416.)

It thus appears that the word "local" was intended to confine the exemption to enterprises of such local merchants. The enterprise need not, of course, conduct all of its business within the State in which it is physically located, since the exemption specifically provides that it may make a portion of its sales outside the State in which it is located.

§ 794.114 The enterprise must be "independently owned and controlled."

Another requirement for exemption under section 7(b)(3) is that the enterprise must be "independently owned and controlled". Since this requirement is in the conjunctive, it must be established that the enterprise which is engaged in the wholesale or bulk distribution of petroleum products is both